

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Case No. 5:21-CV-00419-M-BM

BRITTNEY L. WOODY,

Plaintiff,

v.

AEROTEK AFFILIATED SERVICES
INC.,

Defendant.

ORDER

These matters come before the court on the Defendant's Motion to Dismiss Amended Complaint [DE 33] and Plaintiff's Motion to Amend Complaint [DE 41]. Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), United States Magistrate Judge Brian S. Meyers issued a memorandum and recommendation ("M&R"), recommending that the court grant in part and deny in part Defendant's motion, conditionally grant the Plaintiff's motion, and permit Plaintiff to amend the operative pleading. DE 47. Judge Meyers instructed the parties to file any written objections to his recommendation on or before September 2, 2024. *Id.* at 20. To date, no objections have been filed.

A magistrate judge's recommendation carries no presumptive weight. The court "may accept, reject, or modify, in whole or in part, the . . . recommendation[] . . . receive further evidence or recommit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b)(1); *accord Mathews v. Weber*, 423 U.S. 261, 271 (1976). The court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* § 636(b)(1). Absent a specific and timely objection, the court reviews only for "clear

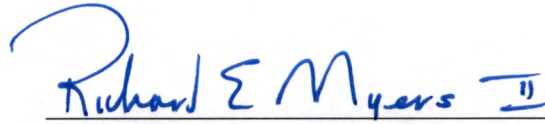
error” and need not give any explanation for adopting the recommendation. *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

Upon careful review of the M&R and the record presented, and finding no clear error, the court ADOPTS the recommendation of the magistrate judge as its own. For the reasons stated therein, Plaintiff’s motion to amend complaint [DE 41] is GRANTED as set forth below and Defendant’s motion to dismiss [DE 33] is GRANTED IN PART and DENIED AS MOOT IN PART as follows:

1. Regarding Plaintiff’s motion for leave to amend complaint:
 - a. The Clerk of the Court shall file the Second Amended Complaint, currently located at DE 41-2.
 - b. Plaintiff is granted leave to file an amended summons for the proper defendant.
 - c. Plaintiff shall have 14 days from the date of entry of the court’s order in which to file a proposed amended summons.
 - d. If plaintiff fails to file an amended summons within 14 days from the date of entry of the court’s order, the clerk of court is ordered to DISMISS the complaint WITH PREJUDICE pursuant to Fed. R. Civ. P. 41(b) for failure to follow a court order.
 - e. Upon submission of the proposed amended summons, if properly completed, the Clerk shall issue the summons prepared by plaintiff. The U.S. Marshal is DIRECTED to serve the defendant named therein by delivering the summons to the addressee listed in the summons along with a copy of both the complaint [DE 9], the first amended complaint [DE 31] and the second amended complaint [DE 41-2], pursuant to Fed. R. Civ. P. 4.
 - f. If the proper defendant is served, then within 14 days from the date of such service, the parties shall confer regarding further scheduling and discovery matters, and shall file a joint status report, or revised Rule 26(f) report, advising the court of the parties’ position(s) with regard to the same.
2. Regarding Defendant’s motion to dismiss:
 - a. Defendant’s motion is GRANTED with respect to any claims under Title VII and any such claims are DISMISSED.

- b. Defendant's motion is DENIED AS MOOT with respect to plaintiff's remaining claims in accordance with the requirements discussed above.

SO ORDERED this 13th day of September, 2024.



RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE